

**PROPOSED DECISION
APPLICATION FOR MINING PERMIT
KENNECOTT EAGLE MINERALS COMPANY
PROPOSED EAGLE PROJECT MINE
Michigan Department of Environmental Quality
July 30, 2007
UPDATED**

Proposed Decision

The Michigan Department of Environmental Quality (DEQ) is issuing a proposed decision to grant a Mining Permit to Kennecott Eagle Minerals Company (Kennecott) for the proposed Eagle Project mine in Michigamme Township, Marquette County. This proposed decision is issued under the provisions of Section 63205 (MCL 324 63205) of Part 632, Nonferrous Metallic Mineral Mining, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).

The DEQ has conducted a detailed and comprehensive review and evaluation of the permit application and supplemental information submitted by Kennecott, and of all public comments it has received thus far. Based on all information available at this time, the DEQ has determined that the application appears to meet the requirements for approval under Part 632.

This is a preliminary decision. The DEQ will hold public input sessions at the following dates and locations to accept public comment on the proposed decision:

Northern Michigan University, Don H. Bottum University Center, second floor, 1401 Presque Isle Avenue, Marquette, Michigan 49855, on September 10, 2007, from 1:00 p.m. to 4:30 p.m., and 6:00 p.m. to 9:30 p.m.

West Branch Community Center, 253-299 Avenue A, Forsyth Township, Michigan, (located on the old K.I. Sawyer AFB, approximately 3.5 miles from County Road 553, just behind the DEQ UP District office), on September 11 and 12, 2007, 1:00 p.m. to 4:30 p.m., and 6:00 p.m. to 9:30 p.m.; and September 13, 2007, 1:00 p.m. to 4:30 p.m.

Lansing Center, Rooms 203 and 204, 333 E. Michigan Ave., Lansing, Michigan, September 19, 2007, from 1:00 p.m. to 4:30 p.m., and 6:00 p.m. to 9:30 p.m.

In addition to the Mining Permit under Part 632, the public input sessions will also cover Kennecott's applications for a Groundwater Discharge Permit and Air Use Permit and for a lease from the Michigan Department of Natural Resources (DNR) for the use of state-owned surface property for Kennecott's proposed processing and storage facilities. The consolidated public hearing process is specifically provided for in Section 63205 of Part 632 (MCL 324 63205(15)).

Following the hearing, the DEQ will accept written comments on the proposed decision to grant a Mining Permit until October 17, 2007. Part 632 requires the DEQ to then issue a final decision on the Mining Permit on or before November 14, 2007; however, the final decision date may be extended if the DEQ requires additional information from Kennecott based on questions raised by public comments. Final decisions on the Groundwater Discharge and Air Use Permits, and on the DNR surface lease, will also be made subsequent to the hearing.

Application Review Process

Kennecott submitted an application for a Mining Permit on February 22, 2006. The DEQ determined the application was administratively complete (i.e., all of the required documents were submitted) on March 10, 2006.

Proposed Decision Application for Proposed Eagle Project Mine July 30, 2007 Page 2

The DEQ formed a Mining Application Review Team (the "Mining Team") to review the application. The Mining Team consisted of technical experts from the DEQ, DNR, and two outside contractors. Collectively, the Mining Team members have the requisite background and expertise in geochemistry of ores and sulfide minerals, rock properties, mine construction and engineering, water chemistry, containment and monitoring of waste materials, air and water monitoring, financial assurance, soil erosion, mine reclamation, fish and wildlife habitat and protection, endangered species, and other pertinent areas.

The DEQ held public meetings on the application on April 18, 2006. The DEQ received public comments at the public meeting, and accepted written comments for 28 days after the meeting. Part 632 required the DEQ to make a proposed decision by June 13, 2006. However, that deadline was delayed due to third-party legal challenges. On June 21, 2006, while the legal proceedings were ongoing, the DEQ requested additional technical information from Kennecott relating to questions regarding the application. The request incorporated pertinent public comments that had been received as well as questions arising from the Mining Team's independent evaluation. Also on June 21, 2006, the DEQ issued a document explaining DEQ's response to all of the public comments.

On October 27, 2006, Kennecott submitted its response to the DEQ's request for additional information. Although not required by statute, the DEQ determined that it was important to provide an opportunity for public comment on Kennecott's response. The DEQ also desired to coordinate the public comment process for the Mining Permit with that for the Groundwater Discharge Permit and Air Use Permit. Kennecott submitted a letter waiving the deadline to issue a proposed decision on the Mining Permit; this allowed the DEQ to provide for public comments to be submitted through December 26, 2006, and to coordinate the public comment process for the permit reviews.

The Mining Team conducted a detailed and comprehensive review and evaluation of the initial permit application and supplemental information provided by Kennecott, and of all public comments submitted. The Mining Team found that the application meets the requirements for a permit to be issued.

On January 9, 2007, the DEQ issued a proposed decision to grant the Mining Permit and scheduled public hearings for March 6 through 8 in Marquette and March 12 in Lansing. Then, on March 1, the DEQ discovered that two reports on the structural integrity of the mine had not been made available for public review. The reports were written by Itasca Consulting Group, Inc., a subcontractor of one of DEQ's contractors on the Mining Team, MFG, Inc. The DEQ withdrew its proposed decision and postponed the public hearings. The DEQ made the reports public and initiated a review of the permit application process by an independent review team headed by Dr. Donald L. Inman of EcoLogic, Ltd. The team concluded that exclusion of the structural integrity reports from the public record was not done to mislead the public or with any malicious intent, and no

one involved in the process was ever asked to suppress information. Furthermore, all of the substantive issues raised in the missing documents were included in a June 21, 2006, letter to Kennecott identifying 91 deficiencies in the company permit application. Dr. Inman's report noted

Proposed Decision Application for Proposed Eagle Project Mine July 30, 2007 Page 3

that some remaining concerns of some Mining Team members regarding the Draft Permit need to be addressed. The following concerns have been identified:

1. There was a potential conflict between the earlier draft permit conditions based on Kennecott's design of the development rock storage area and a revised design based on DEQ's requirements.
2. Staff of the DNR had raised several issues regarding monitoring of surface water quality and aquatic life.

These and other remaining issues were resolved through clarifications with Mining Team members and modifications to the draft permit conditions. Changes to the draft permit include requirements for a mine exhaust fan silencer; additional monitoring of fish and other aquatic species before, during, and after mining operations; improvements to liner monitoring requirements; and elimination of provisions that would duplicate or conflict with other environmental permits and approvals. The Mining Team met for a final review of the application, and all members agreed to recommend approval of a Mining Permit subject to the revised Draft Permit Conditions.

Dr. Inman's report also recommended the DEQ develop written procedures for reviewing mining permit applications, managing documents, and handling FOIA requests. The DEQ concurred, and has drafted detailed procedures, which are in the final stages of review.

In addition to the independent review of the permit application process, the DEQ contracted with a second outside consultant, Dr. Wilson Blake, for a review of the structural integrity of the mine. Dr. Blake concurred with the previous findings of DEQ's initial review, and recommended the permit be issued subject to the proposed permit conditions.

All information related to the application and reviews has been posted on the DEQ internet site. Paper copies of the information were made available for review at the Peter White Library in Marquette, the Michigamme and Powell Township Halls, and DEQ offices in Gwinn and Lansing.

Based on the recommendations of the Mining Team and on all other relevant reports, documents, and comments received thus far, the DEQ has determined that Kennecott appears to qualify for a permit under the terms of Part 632. Section 63205(10) of Part 632 directs the DEQ to issue a mining permit if the permit application meets the requirements of the law and the proposed mining operation will not pollute, impair, or destroy the air, water, or other natural resources or the public trust in those resources, in accordance with Part 17, Michigan Environmental Protection Act, of the NREPA.